

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SIDNEY E. SMITH III, et al., executors of the Estate of Sidney E. Smith, Jr., Plaintiffs)	
)	
v.)	C.A. No. 02-264 ERIE
)	
UNITED STATES OF AMERICA, Defendant)	District Judge McLaughlin Magistrate Judge Baxter

MEMORANDUM ORDER

Sidney E. Smith, Jr. ("Smith") commenced this action on September 5, 2002, to recover tax and interest that was assessed and collected by the Internal Revenue Service on gifts he made in 1998. This action was referred to the undersigned in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rule 3 and 4 of the Local Rules for Magistrate Judges on September 9, 2002. During the pendency of this litigation, Smith died on April 22, 2003. As a result, Smith's children, Sidney E. Smith, III, and Jill P. Smith were appointed Executors of Smith's estate on April 25, 2003, and were substituted as Plaintiffs in this matter on or about May 27, 2003. (See Document # 14).

On July 1, 2004, this Court filed a Report and Recommendation granting in part and denying in part Defendant's partial motion for summary judgment. [Document #34]. On July 15, 2004, District Judge Sean J. McLaughlin entered an Order adopting the undersigned's Report and Recommendation. After the time period permitted for discovery expired, the parties filed cross-motions for partial summary judgment. On July 22, 2005, this Court filed a Report and Recommendation denying Plaintiff's motion for partial summary judgment [Document # 54] and granting Defendant's cross-motion for partial summary judgment [Document # 61]. The parties have filed their respective pre-trial narrative statements. The parties have not consented to trial before a Magistrate Judge. Therefore, there being no further pre-trial matters to address,

IT IS HEREBY ORDERED that the matter is referred back to District Judge Sean J. McLaughlin for all further proceedings.

S/Susan Paradise Baxter
SUSAN PARADISE BAXTER
Chief U.S. Magistrate Judge

Dated: July 28, 2005